

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THOMAS ISLEY, JEFFERY QUINN, VIPUL
KHANNA, WALINGTON URENA, DANIEL
GULICK, MICHAEL HENCHY JR.,
ANGELA BOVENZI, JONATHAN
YEHUDA, and PAUL HOFFNER, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

Civil Action No.: 2:19-cv-12680-ESK

**[PROPOSED] FINAL ORDER AND JUDGMENT CERTIFYING SETTLEMENT CLASS
AND GRANTING FINAL APPROVAL OF SETTLEMENT**

THIS MATTER having come before the Court for consideration of the motion for final approval of the parties' class action Settlement and the motion for an award of attorneys' fees and expenses, and approval of class representative service awards to the named Plaintiffs, in accordance with the parties' Settlement Agreement;

WHEREAS, Plaintiffs Thomas Isley, Jeffery Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, Michael Henchy Jr., Angela Bovenzi, Jonathan Yehuda, and Paul Hoffner ("Plaintiffs"), and Defendant BMW of North America, LLC ("BMW"), reached a class settlement of this action after substantial arm's length negotiations, and executed a Settlement Agreement on July 8, 2021 (the "Agreement" or "Settlement Agreement");

WHEREAS, on July 23, 2021, Plaintiffs submitted the Settlement Agreement together with a Motion for Preliminary Approval of the proposed Settlement to the Court [ECF 54];

WHEREAS, on August 3, 2021, the Court issued an Order Granting Preliminary Approval of Class Action Settlement granting preliminary approval of the Settlement Agreement and all of its terms (the “Preliminary Approval Order”) [ECF 55], and for settlement purposes only, (a) preliminarily certifying the proposed Settlement Class as set forth in the Settlement Agreement, (b) preliminary appointing Settlement Class Counsel, the Plaintiffs as Settlement Class Representatives, and Atticus as the Settlement Claims Administrator, (c) approving the parties’ proposed Class Notice and plan for disseminating the Class Notice (the “Class Notice Plan”) as set forth in the Settlement Agreement, (d) directing the parties to implement the Class Notice Plan accordingly, (e) directing the time and manner for any Settlement Class Member to object to, or request exclusion from, the proposed Settlement, (f) scheduling the filing of various submissions in connection with the Settlement approval process, and (g) scheduling the Final Fairness Hearing for January 10, 2022;

WHEREAS, the Settlement Claims Administrator, Atticus, timely and sufficiently effectuated the approved Class Notice Plan in accordance with the Settlement Agreement and Preliminary Approval Order (Affidavit of Bryn Bridley, Director of Project Management at Atticus Administration, LLC, dated December 23, 2021 [ECF 65]);

WHEREAS, only four Settlement Class Member submitted an objection to the Settlement [ECF 65];

WHEREAS, only 47 Settlement Class Members submitted valid Requests for Exclusion from the Settlement [ECF 65];

WHEREAS, the Plaintiffs filed their Motion for Final Approval of the Class Action Settlement on December 16, 2021 [ECF 63], and their Motion for an Award of Attorneys’ Fees,

Reimbursement of Expenses, and Approval of Class Representative Service Awards on November 16, 2021 [ECF 58];

WHEREAS, the Court conducted a Final Fairness Hearing on January 10, 2022, the Parties, having appeared by counsel in support of final approval of the proposed Settlement, and the Court, having heard the arguments of counsel and having carefully reviewed and considered the Settlement Agreement, all motions and submissions filed in connection with the proposed Settlement and the approval process, the implementation of the Class Notice Plan, the full record in this Action, and having carefully considered and applied the applicable law and criteria for reviewing and approving class action settlements pursuant to Fed. R. Civ. P. 23 (“Rule 23”) and the factors enunciated in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975):

NOW, THEREFORE, IT IS ON THIS ____ DAY OF ____, 2022, ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of the Action and over the Parties pursuant to 28 U.S.C. § 1332, including all members of the Settlement Class certified for settlement purposes in this Court’s Preliminary Approval Order.

2. The Settlement Agreement is fair, reasonable, and adequate and complies in all respects with Rule 23 and the applicable law. Accordingly, the Court hereby grants final approval of the Settlement and all of its terms and conditions.

3. The Settlement Agreement, including its exhibits, and the definitions contained therein, are incorporated and made a part herein by reference in this Final Approval Order and Judgment.

4. The Court hereby certifies the following Settlement Class:

All current (as of the Effective Date) and former owners and lessees in the United States, including the District of Columbia and Puerto Rico, of

certain of the following U.S.-specification BMW vehicles distributed for sale, registered, and operated in the United States, including the District of Columbia and Puerto Rico: 2013-2019 650i/xi (TU1), 2013-2018 650i/xi Conv (TU1), 2013-2017 650 i/xi Coupe (TU1), 2013-2015 750i/xi (TU1), 2013-2015 750Li/Lxi (TU1), 2013-2017 550i/xi (TU1), 2014-2016 550i/xi GT (TU1), 2014-2018 X5 (TU1), and 2015-2019 X6 (TU1).

5. Excluded from the Settlement Class are Defendant, as well as Defendant's parents, affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers and their owners and immediate family members, independent repair/service facilities and their owners and immediate family members, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendant in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, owners and lessees of vehicles purchased from salvage yards/junkyards/recyclers, vehicles that had a salvage title or deemed a total loss before a repair of any oil consumption related issue, anyone claiming personal injury or property damage other than to a Class Vehicle due to excessive oil consumption or through subrogation, all persons who previously released any claims encompassed in this Settlement, and owners and lessees of vehicles registered or transported outside the United States.

6. The Court finds, for settlement purposes, that the requirements of Rules 23(a) and (b)(3) have been satisfied, warranting final approval of this Settlement and certification of the Settlement Class, because, *inter alia*, the Settlement Class members, numbering over one hundred thousand, are so numerous that joinder of all members is impracticable; there are questions of law and fact common to the Settlement Class; the claims and defenses of the Plaintiffs are typical of those of the Settlement Class Members they represent; the Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the Settlement Class and their interests are not antagonistic to those of the Settlement Class; common questions of law and fact

predominate over questions affecting only individual Settlement Class Members; and a class action is superior to individual litigation in this matter.

7. The Court also finds that the Settlement Agreement is the product of vigorous arm's-length negotiations of disputed claims among experienced class action counsel, and is not the product of collusion. Furthermore, the Settlement was negotiated with the assistance of an experienced neutral mediator. In entering into the Settlement, counsel for both sides adequately assessed this case's strengths, weaknesses and the risks of further litigation, and structured the Settlement in a way that properly accounts for those strengths, weaknesses and risks, and is fair, reasonable and adequate in compliance with Rule 23 and applicable law.

8. At all times, the Plaintiffs and Settlement Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class.

9. Class Notice was properly and timely disseminated to the Settlement Class in accordance with the Class Notice Plan set forth in the Settlement Agreement and the Preliminary Approval Order [ECF 55]. The Class Notice Plan and its implementation satisfied Rule 23, the requirements of due process, and constituted the best notice practicable under the circumstances.

10. The Notice of this proposed Settlement provided by the Defendant's counsel to the U.S. and States' Attorneys General, pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, was timely, proper and fully satisfied the requirements of that statute. The Court also notes that no Attorney General has objected to any aspect of the proposed Settlement.

11. Of the 186,189 Settlement Class Members in this Action, only four Settlement Class Members, or .002%, objected to the Settlement. In addition, only 47 Settlement Class Members, or .0254%, submitted valid requests for exclusion from the Settlement. The Court finds that the very small number of objections and requests for exclusion demonstrates an extremely

favorable reaction of the Settlement Class to the Settlement, which further supports the findings herein and that the Settlement is fair, reasonable and adequate and complies with Rule 23 and the applicable law. Moreover, “any Class Member who objected to the adequacy of relief had the option of opting out of the Settlement and pursuing his or her own case against [BMW].” *See Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *9 (D.N.J. Mar. 22, 2013). The Court therefore overrules the objections and hereby finally approves the Settlement.

12. The terms of the Settlement Agreement, including the Released Claims against all Released Parties, and of this the Final Approval Order and Judgment, are binding in all respects on the Plaintiffs and all Settlement Class Members, as well as their heirs, executors, administrators, successors and assigns, with the exception of the 47 Settlement Class Members, identified in Exhibit A hereto, whom the Court finds as having timely and properly filed requests for exclusion from the Settlement.

13. The Court, having granted final approval of this Settlement, hereby directs its implementation pursuant to the terms and conditions of the Settlement Agreement.

14. The Court hereby finally approves and appoints the following Plaintiffs as Settlement Class Representatives: Plaintiffs Thomas Isley, Jeffery Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, Michael Henchy Jr., Angela Bovenzi, Jonathan Yehuda, and Paul Hoffner. The Court finds that these Settlement Class Representatives have, and will continue to, fairly and adequately protect and represent the interests of the Settlement Class.

15. The Court hereby finally approves and appoints Frederick J. Klorczyk III and Joel D. Smith of Bursor & Fisher, P.A. as Settlement Class Counsel, and finds that they are experienced class action counsel who have fairly and adequately represented, and will continue to fairly and adequately represent, the interests of the Settlement Class.

16. The Court hereby finally approves and appoints Atticus as the Settlement Claims Administrator.

17. The Court hereby grants Settlement Class Counsel's request for an award of reasonable attorneys' fees, inclusive of all expenses, in the total combined amount of One Million Eight Hundred Seventy-Three Thousand Dollars (\$1,873,000.00). Said award shall be paid by Defendant in the manner provided by the terms of the Settlement Agreement, and shall fully, completely and forever satisfy any and all obligations of Defendant, and any Released Party, with respect to any and all counsel fees and expenses in connection with this Action and the Settlement.

18. The Court also hereby approves the payment of class representative service awards to the Settlement Class Representatives as follows: Three Thousand Dollars (\$3,000.00) each to Thomas Isley, Jeffery Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, Michael Henchy Jr., Angela Bovenzi, Jonathan Yehuda, and Paul Hoffner. Said service awards are to be paid by Defendant in the manner provided by the terms of the Settlement Agreement, and said payments shall duly, completely and forever satisfy any and all obligations of Defendant, and any Released Party, with respect to Settlement Class Representative service awards.

19. Plaintiffs, and each and every Settlement Class Member (other than the Settlement Class Members specifically listed in Exhibit A to this Final Approval Order and Judgment), hereby fully, finally release and forever release, discharge and acquit all Released Parties from all Released Claims, as set forth in the Settlement Agreement.

20. This Action, and all claims against Defendant, are hereby dismissed with prejudice, without fees or costs to any party, except as expressly provided for in the Settlement Agreement and this Final Approval Order and Judgment.

21. Plaintiffs and each and every Settlement Class Member (other than those specifically listed in Exhibit A), and any person actually or purportedly acting on behalf of any said Settlement Class Member(s), is/are hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative, collective or other action or proceeding, directly or indirectly, in any judicial, administrative, arbitral, or other forum) against any of the Released Parties. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Approval Order and Judgment, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments. However, Settlement Class Members are not precluded from communicating with, or complying with requests or inquiries from, any governmental entity or authority relating to any issues raised in this Action or Settlement.

22. Nothing in this Final Approval Order and Judgment, the Settlement, the Settlement Agreement (including, without limitation, its exhibits), and any and all negotiations, documents, and discussions associated with it, is or shall be deemed, construed to be, or in any way used as, an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, of any liability, or of any wrongdoing whatsoever, by or on the part of Defendant or any Released Party, or of the truth of any of the claims and allegations asserted by Plaintiffs in this Action, all of which are hereby denied.

23. By incorporating the Settlement Agreement and its terms herein, the Court determines that this Final Approval Order and Judgment complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

24. Without further order of the Court, the parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement.

25. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain continuing jurisdiction over the Action, the Parties and the Settlement Class, and all matters relating to the interpretation, administration, implementation, effectuation and enforcement of the Settlement Agreement and this Settlement, which includes, without limitation, the Court's power pursuant to the All Writs Act, 28 U.S.C. § 1651, or any other applicable law, to enforce the above-described bar on and injunction against prosecution of any and all Released Claims.

26. Finding that there is no just reason for delay, the Clerk is directed to enter this Final Approval Order and Judgment forthwith.

Hon. Edward S. Kiel
United States Magistrate Judge

Exhibit A
Isley, et al. v. BMW of North America, LLC
Civil Action No. 2:19-cv-12680-ESK
Requests for Exclusion

Opt Out Number	First Name	Last Name	VIN	Status	Reason
OPTOUT1	PAMELA K	MAHAN	5UXKR6C59E0J73269	VALID	
OPTOUT2	THOMAS WILLIS	NORTHERN	5UXKR6C58G0J80703	VALID	
OPTOUT3	SERGEY S	OVECHKIN	5UXKU6C5XJ0W38974	VALID	
OPTOUT4	BLAISE J	VERDI	WBAYE8C54DD132264	VALID	
OPTOUT5	JASON	BROWN	5UXKR6C51F0J77205	VALID	
OPTOUT6	FRANK MARTIN	CHOMENKO	WBAYE8C51FD781314	VALID	
OPTOUT7	ANTONIO S	VICIDOMINI	5UXKR6C58F0J76259	VALID	
OPTOUT8	STEVEN M	RUFFALO	5UXKR6C54G0J80486	VALID	
OPTOUT9	STEVEN M	RUFFALO	WBAYB6C5XDC998294	VALID	
OPTOUT10	FRANCESCA A	CECCORULLI	WBAYF8C53DD140269	VALID	
OPTOUT11	RYAN L	ENNIS	5UXKR6C5XE0J73376	VALID	
OPTOUT12	TAMRA MARIE	KNUTSON	5UXKU6C53G0R34038	VALID	
OPTOUT13	LINDA G	BEHNKE	WBAYP1C59FD216827	VALID	
OPTOUT14	EDITH D	EARLY	WBAKN9C55ED680710	VALID	
OPTOUT15	ANTHONY	CARTOLARO	5UXKR6C55G0J82229	VALID	
OPTOUT16	GEORGE J	NADER	WBAYF8C54DD140801	VALID	
OPTOUT17	LISSA M	CONYERS	5UXKR6C5XF0J78661	VALID	
OPTOUT18	DANIEL JOSEPH	RICCOMINI	5UXKR6C5XF0J79308	VALID	
OPTOUT19	GEORGE M	WILLIAMS	WBAYE8C57ED780649	VALID	
OPTOUT20	TERRY LAVAUGHN	YOUNG	WBAYE8C50DDE22102	VALID	
OPTOUT21	GEORGE C	WYNN	WBAYA8C5XDC996883	VALID	
OPTOUT22	MICHAEL W	WHITEMAN	WBAYE8C56DD133786	VALID	
OPTOUT23	MARIA MARTHA	VASQUEZ	WBAYE8C52ED136377	VALID	
OPTOUT24	ATUL J	RATANJI	WBAYE8C50DD132486	VALID	
OPTOUT25	SAYEED ABDUL	MOHAMMAD	WBAYB6C5XED224705	VALID	
OPTOUT26	TONY ROJAS	RUSSO	WBAYE8C57ED780425	VALID	
OPTOUT27	IWONA E	MISIUTA	WBAKN9C57ED681986	VALID	

OPTOUT28	GENNADIY	SHUMAKH	WBAYB6C53DC997987	VALID	
OPTOUT29	THOMAS DAVID	STEELE	WBAYE8C51ED136211	VALID	
OPTOUT30	ROYCE EVERETT	HOOD	5UXKR6C53E0C03370	VALID	
OPTOUT31	JACK	HIGBEE	5UXKR6C58E0J73697	VALID	
OPTOUT32	MENACHEM	LANGER	WBAYF8C5XED653620	VALID	
OPTOUT33	JANE TROTTER	JOHNSON	WBA6B2C58DD128537	VALID	
OPTOUT34	LARRY DARNELL	JONES	WBAYP9C59DD168757	VALID	
OPTOUT35	MICHAEL	KIRSHTEYN	5UXKR6C56E0J73200	VALID	
OPTOUT36	RODNEY J	GAINOUS	WBAKN9C58ED681978	VALID	
OPTOUT37	PATRICIA C	BENSON	WBAYF8C59DDS17324	VALID	
OPTOUT38	LAWRENCE ROY	BELL	WBAYE8C55DD132256	VALID	
OPTOUT39	JOHN MICHAEL	ALBERT	WBAYE8C53DDE22031	VALID	
OPTOUT40	DERRICK	DUNLAP	WBAKN9C52ED682107	VALID	
OPTOUT41	JOHN A	FOWLER	WBAYP9C56DDW21300	VALID	
OPTOUT42	FRANK C	BLUMEYER	WBAYE8C55DDE22256	VALID	
OPTOUT43	YOAN	HERNANDEZ	WBAYB6C5XED224283	VALID	
OPTOUT44	DONEGAL INSURANCE GROUP		WBAYE8C57DD133165	INVALID	NO VEHICLE INFO
OPTOUT45	KEVIN M	CONNAUGHTON	WBA6B2C51ED129529	VALID	
OPTOUT46	ARNELL KEITH	BELL	WBAYE8C51DDS15926	VALID	
OPTOUT47	TAYSON C	GAINES	WBA6B2C54ED128990	VALID	
OPTOUT48	UNDRELL ADARRYLL	AMBROSE	WBAYE8C54FD782232	VALID	
OPTOUT49	NADIYAH	FORD	WBA5M6C55ED085953	INVALID	UNTIMELY